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are the principles upon which such a law should be based, and what generally should be its provisions?" which is to be discussed by Professor A. de Lapradelle, of the University of Paris, representing the American Society of International Law.

I suppose there has not been a day in the history of the American Republic from the day LaFayette placed his foot upon our soil, when a Frenchman was not welcome among us. There is not a heart in our country that does not go out in admiration and affection to France at this stern hour. We are very glad indeed to welcome to this platform Dr. de Lapradelle.

THE UNIFICATION OF THE LAWS OF NEUTRALITY*

ADDRESS OF A. DE LAPRADELLE,

Professor of International Law in the University of Paris

The lack of a sanction is not at the present moment the only imperfection in international law. Not only is it a grave matter that most definite conventions and the best established principles are in danger in the recent state of international relations of remaining pure formula, or scraps of paper, but it is a no less serious matter that on certain points even the content of international rules, apart from all questions of sanction, has not been recognized with certainty. That precision of juridical rules which is necessary for the security of juridical relations is still lacking in international law. Not that there are wanting in various countries very precise and clear rules on a certain number of problems, but these rules contradict each other and the more precise they are the more thoroughly are they in opposition to other rules. That is to say, international law is still in many respects in the purely national phase of its development. States determine it in a manner purely unilateral or individual, in laws, decrees, ordinances, and other acts which emanate from their sovereignty. They apply it either in their prize tribunals or in their national courts of justice. For want of a common legislative organ, or at least of a superior international jurisdiction, they are themselves both legislators and judges in questions in which, on the contrary, they ought to be subject to a legislator or a judge. Now the national legislator or judge has a natural tendency to shape international law according to

*This paper was delivered in French, and an English version supplied by the author.

the tendencies, conscious or unconscious, of particular national interests. When states find themselves in a condition of practical equality, in which consequently their interests appear to be identical (for example, in a matter concerning the status of diplomatic agents), the law tends to uniformity in spite of minor divergencies of detail. So there is no question easier to determine than that of diplomatic immunities, and custom here has sufficed to regulate the matter almost everywhere without appeal to conventions. But when it comes to questions in which states do not present an equality of conditions, neither geographic, economic or social, then different systems trace their divergent furrows in the field of international law. Instead of the rules in each state coinciding with the rules in all the other states and thus deepening the common furrow, we have several rules tending by their cross furrows to plough the field in all directions, crossing each other, branching out sideways, and interlaced in inextricable confusion. What kind of field will that be, and what harvest can it produce? Nevertheless, at the present moment that is actually the condition of international law. On every occasion when political interests are at stake the legislator and the judge interpret the rules of international law in such measure as they are able, in a sense conforming to a higher interest than that of international law, *viz.*, that of their own nation.

If, for example, it is a question of nationality, those states which have a large population and those which have but few can not possibly have the same point of view. The old countries try to keep their hold on their citizens abroad even after their naturalization, or even demand of their children born on foreign soil the old allegiance. The new countries try to assimilate the wholesome, enterprising and active elements which come from abroad, and to cut all the bonds, at least those of nationality, between the native state of the emigrant and the country which, because it gives him the opportunity to accumulate property and often to enjoy a new liberty, has the right to demand of him full and complete fidelity. Consequently there is no more difficult problem than that of the determination of a uniform law of nationality. The judge in arbitration may deduce this law from the principle that every man ought to be allowed freely to choose his country but to have only one country. However, the different nations hold so strongly to their divergent laws on this point, that often, after having inscribed them in their constitutions, they forbid any arbitrament upon them.

If it is a question, not of the building, but of the defense of a nation, a militarist state which has all its available population under arms in the regular army, according to its institution of compulsory military service, will not have the same ideas on the *levee en masse* as a nation, which having only a militia or a voluntary army, would have to count on the people suddenly summoned to arms. This explains why at the Congress of Brussels in 1874, and at the Hague Conference of 1907 the Powers found it impossible to fix in a definite convention the rights of populations of invaded territories.

Moreover, a nation which has only a merchant marine without a war fleet will naturally wish to preserve the right of privateering in order to protect its merchant marine, while a nation which has a powerful fleet, like England, will not hesitate to demand the suppression of this right, as England did in 1856.

To come to the problem which is occupying our attention at present, the problem of neutrality. Here a difference of geographical conditions determines different tendencies among the nations. An insular Power which has long since assured itself of havens of shelter on all the great maritime routes of the globe will naturally be inclined to believe that neutrals ought to shut their ports to belligerents; while, on the other hand, a nation which has no colonies, no ports of refuge, no coaling stations, will have the tendency to interpret the phrase, "the freedom of the seas," as carrying with it the hospitality of neutral ports. Again, a nation which in time of peace makes extensive military preparations naturally has all the necessary elements for the manufacture of arms and munitions and will have a tendency to believe that it is the duty of neutral nations to prohibit the exportation of arms and munitions to the profit of the belligerent; while a nation which, sincerely desirous of shunning war, gives its military budgets only a relative importance, will consider that such arms and munitions ought to be exported freely with only the risk of capture on the high seas as contraband of war.

These few examples are sufficient to show that even before meeting any obstacle inherent in the lack of sanction, international law meets a fundamental difficulty, *viz.*, a lack of certitude resulting from conflicting national conceptions, which themselves are the results of divergent interests. International law has been too long in respect to its most important points scarcely more than a loosely bound bundle of faggots of national laws. The time has come to substitute for

the nationalization of international law, which has persisted so long, a real internationalization. If the notion of the juridical equality of states is true, international law can not vary according to the private conception of the different states, that is to say, according to their unequal conditions, of population, wealth, and geographic situation. If it is true that law is above the subjects whom it rules, international law can not be the servant of any particular nation's ambitions, the auxiliary of its greed or the ally of its political or economic projects of leadership. It is not a mercenary ally which the states can take into their pay. It is the expression of the rule of justice and reason, and the expression law means a rule applicable equally to all the members of the society. The rule of law may, without doubt, be in accord sometimes with the interests of one and sometimes with the interests of another state, but it can in no wise be interpreted by one or the other in order to serve that particular interest. International law can be the expression of no other interests but the general and permanent interests of political life. It is the law which rules international society; the law, like the society, must be uniform.

Between the diverse conceptions of international law which confront us, we must then make our choice; for a diversity of rules can not be tolerated. If this diversity manifests itself in certain points, it is but a transitory manifestation, indicating that in the evolution of international society a transition is being made from an inferior to a superior rule under the influence of the progress of science and conscience. The uniformity of international law must not be confounded with its fixity. It may vary and develop in time, but at the same moment it can not admit variations in space.

Uniformity is desirable in international law at all points, but especially in the matter of neutrality. When two nations are at war it is, of course, impossible to hinder hostilities by the precision of international law, but when they are at peace, although threatened with the contagion of war by the near presence of the belligerent armies, there is still opportunity to escape the peril of the extension of war to their land through the careful enunciation of and strict obedience to international conventions. To allow divergence here is to prolong uncertainty and to open the field to quarrels, recriminations, friction and even conflicts between belligerents and neutrals. These conflicts are deplorable, first, because they lead naturally to war and so extend the circle of belligerents, when states which act

on the principles of justice and humanity ought to restrain the intensity and violence of war; and, secondly, because these conflicts deprive the neutral of the confidence of the belligerent, a confidence which might be useful both for them and for him to preserve intact, so that he might later be invested with the honorable privilege of aiding the belligerents to come to an agreement on the principles or even the terms of peace. The rules of neutrality ought to be made precise and uniform all the more as their lack of uniformity is calculated to provoke between belligerents and neutrals the conflict which the neutrals ought in principle first to prevent, then to stop as soon as the moment comes for a durable peace. A uniform law, then, on neutrality for all the nations is eminently desirable.

But if such a law is desirable, is it also practicable? Can one hope that in such questions all neutrals will come to accord with each other, and all the belligerents with the neutrals? This is a grave problem. There are certainly a number of points on which controversy is condemned in principle, but at the same time there are other points on which at the present moment a divergence of views seems established by principle. All the nations are of accord on the desirability of a single rule in the matter of contraband, of blockade, of continuous voyages and of visit and search. Just what this rule should be, is another question, but that it should be the same rule is agreed to by all. On the contrary, there are certain parts of the law of neutrality where divergence, although condemned in principle, is formally accepted and expressly recognized, each state being free to determine, according to the extent of its competence, following the exigencies of its conscience and the best regard for its interests, the rules of neutrality which apply to it. Liberty for the neutral himself to determine his duty of neutrality, is the principle announced by the conventions of The Hague of 1907 on the rights and duties of neutrals in land warfare (Convention 5) and in maritime warfare (Convention 13).

On the matter of maritime hospitality, we have two conflicting points of view—one insular, the other continental. According to the rules announced by Great Britain at the opening of the War of the Secession, ships of war were prohibited from remaining in neutral harbors for more than 24 hours, from coaling more than enough to supply their needs as far as the nearest harbor of their own nation, and from entering the same port again before the expiration of a period of three

months. Following up these restrictive measures still further, the celebrated proclamation of the Governor of Malta (of the 12th of August, 1904), and the opinion of the eminent English jurist Lawrence, did not hesitate to propose as the formula of a perfect international law, the complete prohibition of coaling, and the closure of neutral ports to belligerent vessels, even for the modest space of 24 hours. On the other hand, following the view of the continental nations, steadily developed by France throughout her history, and supported by Germany, Italy and Russia at the Hague Conference, the neutral state has the right to allow a belligerent vessel a sojourn of more than 24 hours in her ports, to take on coal without limit, to return to the port at pleasure, on the sole condition that the neutral waters are not made a base of naval operations.

Ideas of neutrality are not in accord, either, on the question of trade in arms and munitions of war. In the terms of Conventions 5 and 13 of The Hague (Oct. 18, 1907) we read: "A neutral Power is not obliged to prevent the exportation or the transit, for the use of one or another of the belligerents, of arms, munitions, and, in general, of whatever may be useful for army or fleet." On this question we find three different ideas confronting one another: one of them, to the effect that the duty of neutrals is to forbid absolutely the exportation of arms and munitions of war—an opinion developed by M. Kleen at the Institute of International Law in 1897; a second, to the effect that neutral states shall allow the belligerents free power to secure arms and munitions, subject to the ordinary conditions of commerce, without other provision than that the belligerents shall stand on a complete equality with each other in this respect; finally, a third opinion, to the effect that neutrals have full power either to prohibit or to permit the exportation or transit of arms and munitions for the benefit of one party or another of the belligerents. Examples of the exercise of national authority in accordance with one or another of the foregoing views may be presented as follows:

(1) In the Spanish-American War of 1898, Brazil, Denmark, and Portugal forbade the trade in arms, and at the beginning of the present war Brazil did the same.

(2) The United States, following their established tradition, give belligerents full liberty to come here and purchase arms, on the principle that such treatment is equal for all parties.

International law is uniform on this point, in that it allows every

state to determine for itself whether it will or will not export arms, whether it will or will not open its ports to ships of war of the enemy, whether it will or will not permit coaling; but the law varies greatly according to whether a nation makes use of this liberty or not. The contradiction can not be avoided. To leave a state the right to choose between two opposite rules is to invite it to pronounce which of these opposing rules is the better.

In the absence of a juridical obligation, has not a neutral state the moral obligation to exercise the choice which is open to it? Has it not the moral obligation to use its liberty in order to forbid trade in arms, to restrict the right of sojourn, and to deny the hospitality of its ports to belligerent vessels? The causes of embarrassment for neutrals and occasions of recrimination for belligerents are, then, not as yet removed by a uniform practice of international law. The present war offers us a striking example of this.

If a state does not establish a special ruling on the question of opening or closing its market for arms and ammunition, we presume that the market is open; but if it does not adopt a rule on the extent of the hospitality which it shall extend to belligerents, we presume that it favors a limited rather than an extensive hospitality, that is, that it favors the English rather than the Continental idea. This implies at bottom, the superiority of one of the two rules over the other: in the case of the sale of arms, the superiority of the rule of liberty; in the case of the hospitality of ports, the superiority of the rule of restriction.

Now, if, in case of doubt, one of the conflicting rules should be preferred to the other, it is because one is ethically superior to the other. In reality, both the rules are rules of compromise; but if the neutral nation seeks an ethical basis of justification, it can not have the liberty to choose between the two rules—one of which is ethically superior to the other. International morality ought not to vary, any more than national morality, to suit the advantage of one or another party. There must be a single rule. What shall this rule be?

To determine this we must first resist the illusion of a double mirage,—first the mirage of history, and second, the mirage of pacifism.

As to the first, it seems as though, throughout the course of the evolution of the laws of neutrality, there were a constant tendency to the restriction of the liberty of a neutral state. The neutral, who, at the close of the eighteenth century, could let a belligerent pass through

his territory, without violating the rules of neutrality, has been forbidden to do this since the beginning of the nineteenth century, and this revision of international right was solemnly registered in the Hague Convention of 1907. So, then, refusal tends constantly to replace permission: that is the law of history.

As to the mirage of pacifism, it seems as if any favor granted by a neutral to a belligerent, or even to all belligerents equally, were an encouragement of the extension of war itself, and consequently ought to be denied. Hence the prohibition to belligerents to use neutral ports, to procure coal, and the parallel prohibition to transform their money or their credit into arms and munitions of war in the market of neutral nations. The law of neutrality oscillates between two ideas: the sovereignty of the neutral state, and the limitation of that sovereignty in the name of a duty to humanity which forbids the neutral to do anything which may enlarge, encourage or even maintain the status of hostilities. If we follow these two ideas to their logical conclusion, we should arrive at these conclusions: that neutral ports ought to be entirely closed to belligerent ships of war (except in case of actual distress), and that the neutral market for arms and munitions ought to be completely shut to belligerents. Neither of these conclusions can be admitted. The first can not, because it would be contrary to the common interest of nations in the free use of the seas; the second, because it would be contrary to the principle of the freedom of international commerce, of which the free use of the seas is but the primary instance. But, furthermore, even from a point of view that is vigorously pacifistic, neither the one nor the other of these conclusions can be admitted. The first would lead nations of great military strength, which (owing to their recent consolidation) have not had the opportunity of securing maritime power through a long succession of generations, to trouble the world's peace in order to get by war or other forms of violence those territories which they think necessary for them to hold the sea in time of war. And, on the other hand, it would be contrary to peace to close the neutral market for arms to belligerents in time of war, for that would be to give a premium to the nations which, having desired war, have prepared for it with diligence. It would thus interfere with the limitation of armaments, which is rightly considered the first step in progress toward a more pacific status of the world.

History shows, without doubt, that the idea of neutrality has passed

from a more liberal to a more restricted interpretation; but there are limits to this evolution. No historical evolution can be indefinitely prolonged. It can not reach the limits indicated in its principles. Now the principle of the new evolution in respect to neutrality is this,—that the régime of necessity is being substituted for the régime of liberty. There should be less and less opportunity for nations to act in this matter according to their good pleasure. This is both in the interests of the belligerent—who before the opening of the war naturally wants to know what will be the rules of the game of war—and in the interests of the neutral—who, at the beginning or even at the threat of war, does not wish to be subjected to pressure from the belligerent to modify his rules of neutrality. Neutrality ceases to be a *right*, and becomes a *duty*. Its rules must not vary according to the states involved—hospitality accorded here and refused there, markets for arms closed here and opened there. A law which is not uniform is not a law. Undoubtedly the law will develop and change. Uniformity does not mean immobility. But until uniformity is attained, it is impossible to say that international law has come to its own.

In the circumstances in which we are at present placed, there are possible transactions and accommodations between divergent interests. But it is working on an unsound basis to refer differences in ethics and law between two systems to the free will of separate states. A neutrality which is still penetrated by the dogma of the independence of states is as yet only the possibility of accommodating contrary interests. The entire history of justice demonstrates the necessity for international law to repudiate this old dogma in order to accept the modern principle clearly deduced from the new conditions of international intercourse—as the hallowed and perpetual nature of man. The interdependence of states is only the juridical expression of the solidarity of man. For political progress among states, as well as for social progress among men, it is indispensable that this principle shall cease to be a vague and indeterminate makeshift, and become a consistent rule of action.

The CHAIRMAN. This paper concludes the address this evening, and I am sure it is the desire of all to express our gratitude for the three able papers to which we have listened.

The meeting stands adjourned.